

22

# TRANSCRIPT OF RECORD.

---

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1911.

No. 624

---

LEO MEYER, AS AUDITOR OF THE STATE OF  
OKLAHOMA, APPELLANT,

vs.

WELLS, FARGO & COMPANY.

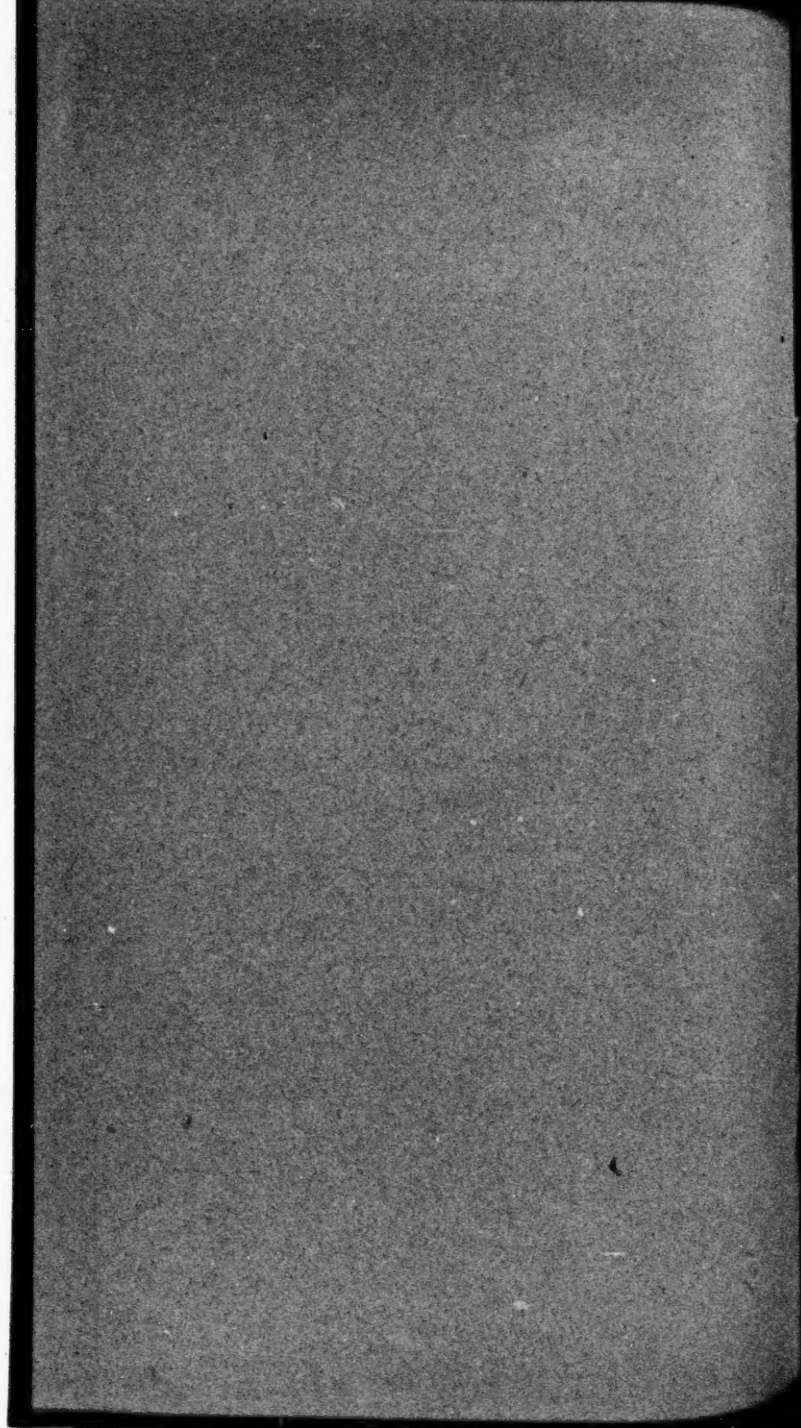
---

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR  
THE WESTERN DISTRICT OF OKLAHOMA.

---

FILED MAY 28, 1911.

(22,700.)



(22,700.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1911.

No. 624.

LEO MEYER, AS AUDITOR OF THE STATE OF  
OKLAHOMA, APPELLANT,

*vs.*

WELLS, FARGO & COMPANY.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR  
THE WESTERN DISTRICT OF OKLAHOMA.

INDEX.

	Original.	Print
Bill of complaint.....	1	1
Demurrer to bill .....	10	6
Stipulation and order of October 31, 1910, submitting cause, &c. ....	12	7
Stipulation for substitution of party defendant.....	14	8
Order substituting party defendant.....	16	9
Order granting temporary injunction.....	18	10
Final decree.....	20	11
Assignment of errors.....	22	12
Application for appeal and order allowing appeal.....	24	13
Bond on appeal.....	27	14
Waiver of citation on appeal.....	29	15
Stipulation as to record on appeal.....	30	16
Præcipe for transcript.....	31	16
Clerk's certificate to transcript.....	33	17

1 In the Circuit Court of the United States for the Western District of Oklahoma.

WELLS, FARGO & COMPANY, Complainant,

vs.

M. E. TRAPP, as Auditor of the State of Oklahoma, Defendant.

*Bill of Complaint.*

Wells, Fargo & Company, a corporation, brings this its Bill of Complaint against M. E. Trapp, as Auditor of the State of Oklahoma, who is duly qualified and acting as such, and thereupon complaining avers:

First. That it is a corporation incorporated under the laws of the State of Colorado and a citizen and resident of said State; and that the defendant, M. E. Trapp, is a citizen and resident of the State of Oklahoma and County of Logan and he is the duly qualified and acting Auditor of the State of Oklahoma and the person charged by law with the execution of the provisions of the Statute hereinafter referred to and complained of.

Second. That there is involved herein a controversy between the complainant and defendant, which arises under the Constitution and laws of the United States, in that complainant seeks to enjoin the enforcement of what is known as the Oklahoma Gross Revenue Tax Law levied by an Act of the Legislature of the State of Oklahoma upon the gross receipts for revenues of Express Companies

2 and other public service corporation- doing business in the State of Oklahoma so as to impose directly and unlawfully the burden of such tax upon the interstate business, interstate receipts and interstate revenues of the complainant.

That said law is violative of the Constitution of the State of Oklahoma and of the United States of America and the Amendment thereto, and contrary to the laws of the United States, and that the matter and amount in dispute herein exceeds, exclusive of interest and costs, the sum or value of Two Thousand (\$2000.00) Dollars.

Third. That complainant is now and was at the time of the admission of the State of Oklahoma, engaged in the conducting of an express business over various lines of railway in the State of Oklahoma, aggregating in all about 1,325 miles; that its duties require it to receive and transport goods, wares and merchandise between points within the State of Oklahoma and between places located outside the State of Oklahoma and places within the State of Oklahoma; that is to say, complainant is engaged in both State and Interstate express business, a large part of its revenue being received from each of said sources respectively.

That complainant is an Express Company within the meaning of the Act of the Legislature of the State of Oklahoma, approved March 10, 1910, constituting Chp. 44, Session Laws of 1910, entitled:

"An act providing for the levy and collection of a gross revenue

tax from public service corporations in this State and from persons, firms, corporations or associations engaged in the mining or production of coal, asphalt or ores bearing lead, zinc, jack, gold, silver or copper, or of petroleum or other mineral oil or of natural gas; and declaring an emergency."

3 That said transportation of express matter is conducted under contracts with the various railroad companies, by the terms of which there is paid to said Railroad Companies substantially 54 per cent of the gross earnings for the services of such railroad companies in the transportation of the property, the transportation of which is conducted by complainant on the trains of such railroad companies.

Fourth. That it is provided in Section 1 of the Act above cited that the term "transportation company" therein includes any person, firm, association, company or corporation engaged in the express business.

That Section 2 of said Act is as follows:

"Every corporation hereinafter named shall pay the state a gross revenue tax for the fiscal year ending June thirtieth, nineteen hundred and nine, and for each fiscal year thereafter, which shall be in addition to the taxes levied and collected upon an ad valorem basis upon the property and assets of such corporation equal to the per centum of its gross receipts hereinafter provided, if such public service corporation operates wholly within the State, and if such public service corporation operates partly within and partly without the state, it shall pay tax equal to such proportion of said per centum of its gross receipts as the portion of its business done within the state bears to the whole of its business; provided that if satisfactory evidence is submitted to the Corporation Commission, at any time prior to the time fixed by this act for the payment of said tax, that any other proportion more fairly represents the proportion which the gross receipts of any such public service corporation for any year within this state bears to its total gross receipts, it shall be the duty of said Corporation Commission to fix, by an order entered of record, such other proportion of its total gross receipts as the proportion upon which said tax shall be computed; and a copy of such order so made and entered of record, as aforesaid shall be certified to the State Auditor."

That Section 3 of said Act fixes the rate of per centum to be paid by each public service corporation. The per centum required to be paid by any person, firm, association, company or corporation engaged in the express business, being three per cent (3%) of the total gross receipts of such person, firm, association, company or corporation engaged in the express business, from all sources whatsoever of its entire business, including state and interstate, and receipts from other sources, to be calculated upon the basis prescribed in Section 2.

That Section 3 further requires that each public service corporation shall, on or before the first day of October, report to the State Auditor, under oath, the "gross receipts of such public service corporation from every source whatsoever for the fiscal year ending the thirtieth day of June, and shall immediately pay to the State Treas-

urer, the gross revenue tax herein imposed, calculated as hereinbefore provided."

The result of said Act is to directly impose the burden of the tax levied by the Act upon interstate commerce in violation to the Federal Constitution and the laws enacted pursuant thereto.

Fifth. Complainant further states that the Constitution of the State of Oklahoma, (Sec. 19, Article 10) contains the following provision:

"Every act enacted by the Legislature, and every ordinance and resolution passed by any county, city, town, or municipal board or local legislative body, levying a tax, shall specify distinctly the purpose for which said tax is levied, and no tax levied and collected for one purpose shall ever be devoted to another purpose."

Complainant says that Sec. 11 of said Gross Revenue Act is as follows:

"All taxes levied and collected under the provisions of this act shall be paid into the State Treasury and applied to the payment of the ordinary expenses of the state government."

5 Complainant alleges that there is no general revenue fund, or fund kept for the payment of the ordinary expenses of the State government and that none is provided for or authorized by the Constitution or laws of this State, and that for said reason and because the same is violative of Section 19, Article 10, of the Constitution, said Act is illegal and void.

Sixth. Complainant says that it belongs to that class of public service corporations described in Section 2 of said Gross Revenue Tax Law Act, which operates partly within and partly without the State, and that a part of its earnings and receipts within the State are from its intra-state business, and that a part thereof, both receipts and earnings, is from its interstate business.

Seventh. That the said M. E. Trapp, Auditor of the State, is charged with the duty of ascertaining the amount required to be paid by each public service corporation or company, on account of the purported levy made by said Gross Revenue Tax Act above referred to and said tax is made to bear a penalty of eighteen per cent (18%) per annum after the first day of the fiscal year for which it is levied.

That it is the duty of said Trapp, when he has ascertained the amount to be charged against each public service company (Section 9) to issue his warrant directed to the sheriff of any County wherein same or any part thereof accrued, and the sheriff, to whom said warrant shall be directed, shall proceed to levy upon the  
6 property, assets and effects of the person, firm, association, company or corporation against whom said tax is assessed and to sell the same and make return thereof as upon execution.

That the said M. E. Trapp, as Auditor of the State, is, in the discharge of the duties imposed upon him by the said Statute, about to ascertain the amount about to be paid by each public service company, and particularly of the Complainant herein, and certify out the same by the sheriff of some county, to be levied and collected pursuant to said Section 9 above quoted.

Eighth. Complainant further says that said tax should not be held and applied for the past fiscal year, nor until the fiscal year ending June 30th, next; that said Act was only approved March 10, 1910, and carried no emergency clause and did not become effective until 9th day of June, 1910.

That said Act by fair intendment, therefore, does not apply to the present year, but notwithstanding said fact, the said M. E. Trapp, as Auditor, is preparing to certify out said tax against the Complainant and its property for the present year, i. e. for the fiscal year ending June 30th, 1910.

7 Ninth. Complainant is not informed or advised as to the exact amount claimed by the State of Oklahoma under and by virtue of said Act, or that will be certified out by the said M. E. Trapp, as Auditor to the sheriff, as required in Section 9 of said Act, but says it will be, as complainant believes and charges, between eight and twenty thousand dollars.

Complainant says that the affect of said law is to levy a three (3) per cent tax upon a certain percentage of its entire gross receipts from its entire business, wherever done, and upon its income, however realized, whether from transportation or otherwise.

That its gross receipts for transportation or express earnings for the fiscal year ending June 30th, 1910, were \$27,303,701.75; that in addition thereto complainant receives each and every year, and especially did so for the year ending June 30th, 1910, large sums of money as interest upon bonds held by it, rents upon real estate and other income from various sources, the property from which said receipts are received being located entirely outside the State of Oklahoma and not used in the transportation business.

Complainant says that its intra-state receipts for the fiscal year ending June 30th, 1909, were \$298,655.00; that Oklahoma's pro rate of the interstate business is about \$345,955.00; that it has no record of the gross receipts within the State of Oklahoma, but that it estimates that its gross receipts in the State of Oklahoma from all sources, including both intra and interstate, would not be less than \$400,000.00 and not more than \$600,000.00.

8 That for the reasons above set out and for the injuries and wrongs about to be committed against complainant and its property, it has no adequate remedy according to the course of common law. In consideration whereof and because of the fact that no remedy exists according to the course of common law, and relief can be had only in a court of equity, where such matters are peculiarly cognizable, complainant prays that said gross revenue law hereinabove described be declared to be violative of the laws of the United States and of the Constitution of the State of Oklahoma and a burden upon interstate commerce, and that it be adjudged to be void; and that the said M. E. Trapp, as Auditor, his successors, deputies and employes, and each of them, be enjoined and restrained from issuing said certificate to said sheriff, as provided in said Act, and that upon final hearing said injunction be made perpetual; and that in the interim, and as an immediate protection to complainant's rights against the immediate issuance of such certificate by said sheriff, a temporary restraining order be granted and issued re-

straining, until a hearing can be had upon application for temporary injunction, the issuance of said certificate to said sheriff, and that upon hearing a temporary injunction be granted to be followed by a final injunction pending the disposition of the cause upon its merits.

That complainant have such other and further relief as in equity and good conscience it may be entitled to, together with decree for costs.

9 Complainant further prays that it be granted a writ of subpoena of the United States of America, issued out of and under the seal of this Honorable Court, directed to the said M. E. Trapp, as Auditor, and commanding him upon a day certain therein to be named and under a certain penalty to be and appear before this Honorable Court, then and there to answer, but not under oath (the answer under oath being expressly waived) all and singular the premises and to stand to, perform and abide by such order, direction and decree as may be made against him in the premises and your complainant will ever pray.

COTTINGHAM & BLEDSOE,  
*Attorneys for Complainant.*

COUNTY OF LOGAN,

*State of Oklahoma, ss:*

I, A. T. Payne, being first duly sworn on oath do state that I am Superintendent of Wells Fargo & Company, in charge of its business in the State of Oklahoma, and a resident of said State, residing in Oklahoma City; that I have read over and am familiar with the allegations in the foregoing bill and that the same are true.

A. T. PAYNE.

Subscribed and sworn to before me this 29th day of October, A. D. 1910.

[SEAL.]

CORNELIA SULLIVAN,  
*Notary Public.*

My commission expires April 6th, 1914.

Endorsed: No. 730. In the Circuit Court of the United States for the Western District of Oklahoma. Wells Fargo & Company, Complainant vs. M. E. Trapp, as Auditor of the State of Oklahoma, Defendant. Bill of Complaint. Filed Oct. 29, 1910. Harry L. Finley, Clerk.

10 In the Circuit Court of the United States for the Western District of Oklahoma.

No. 730.

WELLS, FARGO AND COMPANY, a Corporation, Complainant,  
vs.

M. E. TRAPP, as Auditor of the State of Oklahoma, Defendant.

*The Demurrer of M. E. Trapp, as Auditor of the State of Oklahoma, the Defendant Above Named, to the Bill of Complaint of the Wells, Fargo and Company, the Above-named Plaintiff.*

To the Honorable Judges of the Circuit Court of the United States for the Western District of Oklahoma:

This defendant, M. E. Trapp, Auditor of the State of Oklahoma, by protestation, not confessing or acknowledging all or any of the matters and things in the said complainant's bill to be true, in such manner and form as the same are therein set forth and alleged, demurs thereto and for cause of demurrer shows:

That enough does not appear upon the face of the bill to show the court's jurisdiction of the suit, in that it appears upon the face of the bill that this is an action against the State of Oklahoma, of which this court does not have jurisdiction for the reason that upon the face of the bill it does not appear that the consent of said  
11 state has been given to the filing of said suit.

That the said complainant has not in and by the said bill made or stated any such cause as doth or ought to entitle it to any relief as is thereby sought and prayed for from or against this defendant.

Wherefore, and for divers other good causes of demurrer appearing in said bill this defendant respectfully demurs thereto and humbly demands the judgment of this court whether he shall be compelled to make any further or other answer to the said bill, and prays to be hence dismissed with his costs and charges in this behalf most wrongfully sustained.

CHARLES WEST,

*Attorney General;*

W. C. REEVES,

*Assistant Attorney General,*

*Counsel for Defendant.*

WESTERN DISTRICT OF OKLAHOMA,

*County of Logan, ss:*

M. E. Trapp makes solemn oath and says that he is the above named defendant, and that the foregoing demurrer is not interposed for delay and that the same is true in point of fact.

M. E. TRAPP.

Subscribed and sworn to before me this 9th day of Dec., 1910.

[SEAL.]

W. R. McBRINE,  
*Notary Public.*

My Commission Expires Jan. 20, 1912.

I hereby certify that in my opinion the foregoing demurrer is well founded in point of law.

W. C. REEVES,  
*Assistant Attorney General, Counsel for Defendant.*

Endorsed: No. 730. In the Circuit Court of the United States for the Western District of Oklahoma. Wells Fargo & Co., a corporation, Complainant, vs. M. E. Trapp, as Auditor of the State of Oklahoma, Defendant. Demurrer of M. E. Trapp. Filed Dec. 9, 1910. Harry L. Finley, Clerk. Chas. West, Att'y Gen'l.

12 In Circuit Court United States, Western District Oklahoma.

WELLS, FARGO & Co., Complainant,  
vs.

M. E. TRAPP, as Auditor State of Oklahoma, Defendant.

JAMES C. FARGO, President American Express Co., Complainant,  
vs.

M. E. TRAPP, as Auditor State of Oklahoma, Def't.

WM. H. CROSBY, Vice-President U. S. Express Co.,  
vs.

M. E. TRAPP, as Auditor State of Oklahoma, Defendant.

Whereas the above styled causes were filed in the Circuit (Court) of the United States for the Western District of Oklahoma on the 29th day of October, 1910, assailing the Oklahoma gross revenue tax law as being violative of the federal and state constitutions, and whereas a temporary restraining order has been granted by the Hon. J. H. Cotteral, Judge of said court, and the said Hon. J. H. Cotteral has called to sit with him in said cause the Hon. Walter H. Sanborn, Circuit Judge, and the Honorable Ralph E. Campbell, District Judge, and

Whereas, copies of the bill & restraining order have been served upon the defendant and the Attorney General & Governor of the State of Oklahoma.

Now, Therefore, It is agreed by and between counsel for the complainant, Chas. West, Attorney General of the State of  
13 Oklahoma and attorney for the defendant, that said causes upon the application for temporary injunction is now submitted to the Hon. Walter H. Sanborn, Circuit Judge, and the Honorable Ralph E. Campbell and John Cotteral, District Judges, the defendant to (be) allowed until Dec. 15, 1910, to plead and file brief

in said cause, and the plaintiff 25 days thereafter in which to file briefs in support of their contentions.

CHAS. WEST,

*Att'y Gen'l of Oklahoma.*

COTTINGHAM & BLEDSOE,

*For Complain'ts.*

And thereupon it is ordered that the temporary restraining order hereinbefore granted be continued in force until the court acts upon the causes to be entered — its order on the application for the temporary injunction herein, and that the time for pleading and filing of briefs as herein agreed be allowed and the said cause be now treated as submitted.

WALTER H. SANBORN,

*Circuit Judge.*

JOHN H. COTTERAL, *Judge.*

RALPH E. CAMPBELL, *Judge.*

CHAS. WEST,

*Att'y Gen'l of Oklahoma.*

Endorsed: No. 730, 731, 732. Wells Fargo & Co. vs. M. E. Trapp, et al. Filed Oct. 31, 1910. Harry L. Finley, Clerk. Stipulation and order.

14 In the Circuit Court of the United States for the Western District of Oklahoma.

No. 730.

WELLS, FARGO & COMPANY, Complainant,

vs.

M. E. TRAPP, as Auditor of the State of Oklahoma, Defendant.

*Stipulation Substituting Party Defendant.*

Whereas, since the institution of this proceeding the term of office of M. E. Trapp, as Auditor of the State of Oklahoma, has expired, and Leo Meyer has been elected, has qualified, and is now the duly qualified and acting Auditor of the State of Oklahoma:

It is, therefore, stipulated, that the said Leo Meyer, as successor in office of the said M. E. Trapp, be, and is hereby made party defendant in this action, and that the bill of the Complainant in this cause shall be treated as amended, and as fully and completely as though the said Leo Meyer was named therein, and that any judgment that might have been rendered in this cause against the said M. E. Trapp, may be rendered against the said Leo Meyer, or his successor in office, and that any proceeding that might have been taken by the said M. E. Trapp, in said action, may be taken by the said Leo Meyer, and the said Leo Meyer as Auditor of the State of

15 Oklahoma, hereby enters his appearance in this cause and waives the issuance and service of process.

COTTINGHAM & BLEDSOE,  
*Attorneys for Complainant.*

CHAS. WEST,

By C. J. DAVENPORT,  
*Attorney General of the State of Oklahoma and*  
*Attorney for Leo Meyer, State Auditor.*

Endorsed: In the Circuit Court of the United States for the Western District of Oklahoma. Wells Fargo & Company, Complainant, vs. M. E. Trapp, as Auditor of the State of Oklahoma, Defendant. No. 730. Stipulation substituting party defendant. Filed M'ch 20, 1911, Harry L. Finley, Clerk.

16 In the Circuit Court of the United States for the Western District of Oklahoma.

No. 730.

WELLS, FARGO & COMPANY, Complainant,

vs.

M. E. TRAPP, as Auditor of the State of Oklahoma, Defendant.

*Order.*

Now, on this 20th day of March, A. D., 1911, came on to be heard the stipulation of the parties herein substituting Leo Meyer, as Auditor of the State of Oklahoma, in lieu of M. E. Trapp, agreeing that plaintiff's bill shall be treated as amended and as though the said Leo Meyer was an original party therein and specifically mentioned in said bill as Auditor, and entering the appearance of the said Leo Meyer herein:

After hearing said application,

It is ordered, that the said Leo Meyer, as Auditor of the State of Oklahoma, and as Successor in office of the said M. E. Trapp, be, and he is hereby substituted as party defendant herein;

It is further ordered, that the Bill of Complaint of the Complainant herein be treated as amended so as to ask relief as against said Leo Meyer, specifically and directly, and that the Complainant may so amend the same by interlineation;

It is further ordered, that any judgment may be entered against the said Leo Meyer, that might have been entered against the said M. E. Trapp, and that the said Leo Meyer may take any action or proceeding herein that might have been taken by the said

17 M. E. Trapp as party defendant.

JOHN H. COTTERAL, *Judge.*

Endorsed: In the Circuit Court of the United States for the Western District of Oklahoma. Wells Fargo & Company, Complainant, vs. M. E. Trapp, as Auditor of the State of Oklahoma, Defendant. No. 730. Order. Filed M'ch 20, 1911, Harry L. Finley, Clerk.

18 In the Circuit Court of the United States, Western District of Oklahoma.

WELLS, FARGO & COMPANY (a Corporation), Complainant,  
vs.

M. E. TRAPP, as Auditor of the State of Oklahoma, and LEO MEYER,  
His Successor, as Auditor of the State of Oklahoma, Defendant.

*Order.*

Now, on this the 20th day of March, A. D. 1911, the Complainant, Wells, Fargo & Company, a corporation, appearing by its Attorneys Cottingham & Bledsoe, pursuant to the stipulation heretofore filed in this cause, submitting the application for a temporary injunction to the Honorable Walter H. Sanborn, Circuit Judge, and the Honorable R. E. Campbell and J. H. Cotteral, District Judges, and the Order made thereon by the said Judges October 31, 1910.

It is ordered, that until the final decree is rendered herein or the further order of this court, the defendant, Leo Meyer, as Auditor of the State of Oklahoma, his deputies, assistants, employes and successors in office, and all persons acting by, with, or under him, be, and they are hereby enjoined and restrained from issuing to a sheriff of any county in the State of Oklahoma, his warrant against the complainant herein, Wells, Fargo & Company, or its property for the purpose of enforcing the Gross Revenue Tax levied against the property of this complainant, by an Act of the Legislature of the State of Oklahoma, approved March 10th, 1910, being Chapter 44 of the Session Laws of 1910 and found at pages 65 to 70 thereof, inclusive, or from otherwise demanding of or seeking to enforce against said complainant any sums whatever on account of the provisions

19 of said Gross Revenue Act.

This injunction is to become effective upon the filing and approval of a bond by the Complainant with the proper authorities, in the sum of Three Thousand (\$3000.00) Dollars, securing the payment to the State of Oklahoma, or the legal subdivisions thereof, of all taxes, penalties and damages, owing, or which may accrue to the State of Oklahoma or any legal subdivision thereof on account of the taxes claimed under said Gross Revenue Act for the year 1910-11, and such other damages as may result from the issuance of this order, if it should be finally adjudged that the same should not have been granted.

Complainant is given 15 days from this date in which to file bond with surety to be approved by the Clerk of this Court.

WALTER H. SANBORN,  
RALPH E. CAMPBELL,  
JOHN H. COTTERAL,

*District Judge.*

O. K.

WEST.

Endorsed: No. 730. In the Circuit Court of United States Western District of Oklahoma. Wells, Fargo & Company, Complainant, vs. M. E. Trapp as auditor, et al., Defendant. Order. Filed March 20, 1911, Harry L. Finley, Clerk, by M. V. Haws, Deputy.

20 In the Circuit Court of the United States for the Western District of Oklahoma.

WELLS, FARGO & COMPANY (a Corporation), Complainant,  
vs.

M. E. TRAPP, as Auditor of the State of Oklahoma, and LEO MEYER,  
His Successor, as Auditor of the State of Oklahoma, Defendant.

*Final Judgment.*

On this 20th day of March, 1911, came on to be heard, in open court, the demurrer of the defendant, M. E. Trapp, as auditor of the State of Oklahoma, as adopted by Leo Meyer, his successor, now auditor of the State of Oklahoma, to the bill of the complainant, Wells, Fargo & Company, and by agreement of counsel, in open court, said demurrer to said bill is submitted to the Court for its consideration and disposition.

And after being fully advised in the premises, it is ordered that said demurrer be, and the same is overruled, to which action of the court in over-ruling the same, the defendant, Leo Meyer, as auditor of the State of Oklahoma, duly excepts; thereupon defendant announced that he elected to stand upon his demurrer to said bill and did not desire to plead further.

It is ordered adjudged and decreed, that the Act of the Legislature of the State of Oklahoma of March 12th, 1910, entitled, "An act providing for the levy and collection of a Gross Revenue Tax from Public Service Corporations in this State and from Persons, Firms, Corporations, or Associations Engaged in the Mining or Production of Coal, Asphalt or Ores bearing Lead, Zinc, Jack, Gold,

21 Silver or Copper, or of petroleum or other Mineral, Oil or of Natural Gas," and declaring an Emergency, being Chapter 44 of the Session Laws of 1910, and found in the Session Laws of 1910, at pages 65 to 70 inclusive, is illegal and void as against the Complainant herein and that said Complainant is entitled to have the enforcement of each and every provision of said statute as against it perpetually enjoined.

It is therefore ordered and decreed that the defendant, Leo Meyer, his deputies, assistants, employes, successors in office, their deputies, assistants or employes, and all persons acting under him, be perpetually restrained and enjoined from the issuance to any sheriff of any County in the State of Oklahoma, of his warrant against the complainant herein, or its property, for the purpose of enforcing the provisions of said Act, or from taking any other action whatsoever looking to the enforcement of said Act as against the Complainant or its property.

And it is further considered and adjudged that the Complainant have and recover of and from the defendant the costs of the action, for which, let proper process issue.

JOHN H. COTTERAL, *Judge*.

O. K.

WEST.

Endorsed: In the Circuit Court of United States Western District of Oklahoma. Wells, Fargo & Company, Complainant, vs. M. E. Trapp, as Auditor, et al., Defendant. Final Judgment. Filed March 20, 1911. Harry L. Finley, Clerk, By M. V. Haws, Deputy.

22 In the Circuit Court of the United States for the Western District of Oklahoma.

No. 720.

WELLS, FARGO & COMPANY, a Corporation, Complainant,  
vs.

M. E. TRAPP, as Auditor of the State of Oklahoma, and LEO MEYER,  
His Successor, as Auditor of the State of Oklahoma, Defendant.

*Assignment of Errors.*

The Defendant, Leo Meyer, as Auditor of the State of Oklahoma, and as successor of M. E. Trapp, Auditor of the State of Oklahoma, prays an appeal from the final judgment and decree of this court made and entered in said cause on the 20th day of March, 1911, to the Supreme Court of the United States, and assigns:

First. That the court erred in rendering judgment and decree, by which the demurrer of the defendant to the bill of complaint was overruled.

Second. That the court erred in rendering said final judgment and decree by which it held illegal and void as against the complainant, the Act of the Legislature of the State of Oklahoma of March 12th, 1910, entitled, "An Act providing for the levy and collection of a Gross Revenue Tax from Public Service Corporations," etc., being Chapter 44 of the Session Laws of 1910, and found in the Session Laws of 1910 at pages 65 to 70, inclusive, and by which said final judgment and decree the court perpetually restrained and enjoined the defendant, Leo Meyer, his deputies, assistants, employes, successors in office, their deputies, assistants or employes, or persons acting under him, from the issuance to any sheriff of any county in the state of Oklahoma of his warrant against the complainant herein, or its property, for the purpose of enforcing the provisions of said act, or from taking any other action whatsoever looking to the enforcement of said act as against the complainant or its property.

23 In order that the foregoing assignment of errors may appear of record, the said defendant presents the same to the court, and prays that such disposition be made as is in accord-

ance with law and the statutes of the United States in such cases made and provided.

All of which is respectfully submitted.

LEO MEYER,  
*Auditor of the State of Oklahoma, Defendant,*  
By CHARLES WEST,  
*Attorney General, Solicitor for Defendant.*

Endorsed: No. 730. In the Circuit Court of The United States for the Western District of Oklahoma. Wells Fargo & Company, a corporation, Complainant, vs. M. E. Trapp, as Auditor of the State of Oklahoma, and Leo Meyer His Successor as Auditor of the State of Oklahoma, Defendant. Assignment of Errors. Filed April 27, 1911. Harry L. Finley, Clerk, By M. V. Haws, Deputy.

24 In the Circuit Court of the United States for the Western District of Oklahoma.

No. 730.

WELLS, FARGO & COMPANY, a Corporation, Complainant,  
vs.  
M. E. TRAPP, as Auditor of the State of Oklahoma, and LEO MEYER,  
His Successor, as Auditor of the State of Oklahoma, Defendant.

*Application for Appeal.*

The above named Leo Meyer, as Auditor of the State of Oklahoma, the successor of M. E. Trapp, State Auditor, conceiving himself aggrieved by the final judgment and decree made and entered by the above court in said cause on the 20th day of March, 1911, by which judgment and decree the court overruled the demurrer of the defendant to the bill of complaint, and rendered its final judgment herein, holding void and illegal as against the complainant herein the Act of the Legislature of the State of Oklahoma of March 12, 1910, entitled, "An act providing for the levy and collection of a Gross Revenue Tax from Public Service Corporations," etc., being Chapter 44 of the Session Laws of 1910, at pages 65 to 70 inclusive, and by which said final judgment and decree the defendant, Leo Meyer, his deputies, assistants, employés, successors in office, their deputies, assistants or employés, and all persons acting under him, were perpetually restrained and enjoined from the issuance to any sheriff of any county in the State of Oklahoma, of his warrant against the complainant herein, or its property, for the purpose of enforcing the provisions of said Act of the Legislature of the State of Oklahoma, and were further enjoined and restrained from taking any other action whatsoever looking to the enforcement of said Act as against the complainant or its property, does hereby appeal to the Supreme Court of the United States, for the reason set out in the Assignment of Errors, which is filed herewith, and he prays this petition for such appeal may be allowed, and that the

transcript of the record, proceedings and papers, upon which said final judgment and decree was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 19 day of April, 1911.

LEO MEYER,  
Auditor of the State of Oklahoma,  
By CHARLES WEST,  
Attorney General, Solicitor for Defendant.

Notice and citation on appeal to show cause why application should not be granted is hereby waived this 19 day of April, 1911.

COTTINGHAM & BLEDSOE,  
Solicitor- for Complainant.

Appeal allowed and cost bond fixed at \$500.00, not to operate as a supersedeas.

JOHN H. COTTERAL, Judge.

Endorsed: No. 730. In the Circuit Court of the United States for the Western District of Oklahoma. Wells, Fargo & Company, 26 a corporation, Complainant vs. M. E. Trapp, as Auditor of the State of Oklahoma, and Leo Meyer, his Successor as Auditor of the State of Oklahoma, Defendant. Application for Appeal and order allowing same. Filed April 27, 1911. Harry L. Finley, Clerk, By M. V. Haws, Deputy. Charles West, Attorney General.

27 In the Circuit Court of the United States for the Western District of Oklahoma.

No. 720.

WELLS, FARGO & COMPANY, a Corporation, Complainant,  
vs.

M. E. TRAPP, as Auditor of the State of Oklahoma, and LEO MEYER,  
His Successor, as Auditor of the State of Oklahoma, Defendant.

*Bond.*

28

Bond.

Know all men by these presents:

That Leo Meyer, State Auditor, and Successor to M. E. Trapp, of the State of Oklahoma, as principal, and Benj. F. Harrison, as surety, are held and firmly bound unto the Wells, Fargo & Company, a corporation, in the sum of Five Hundred Dollars, to be paid to it, and for the payment of which well and truly to be made they and each of them are bound by these presents.

Sealed with our seals and dated this 27th day of April, 1911.

Whereas, the above named Leo Meyer, State Auditor, and successor to M. E. Trapp, of the State of Oklahoma, appellant, seeking

to prosecute his appeal to the Supreme Court of the United States, to reverse a final decree rendered and entered in the Circuit Court of the United States for the Western District of Oklahoma, wherein appellant was defendant, and the appellee herein was complainant, on the 20th day of March, 1911.

Now therefore, The conditions of this obligation are such that if the above named appellant shall prosecute his appeal to effect and answer all costs that may be adjudged if he shall fail to make good his appeal, then this obligation to be void; otherwise to remain in full force and effect.

LEO MEYER,  
*State Auditor,*  
BENJ. F. HARRISON,  
*Sec'y State, Surety.*

This bond approved this 27th day of April, 1911.

JOHN H. COTTERAL, *Judge.*

O. K.,  
COTTINGHAM & BLEDSOE,  
*Att'ys for Complainant.*

Endorsed: No. 730. Wells Fargo & Co. vs. M. E. Trapp, Auditor and Leo Meyer, Auditor Successor to M. E. Trapp. Bond. Filed April 27, 1911. Harry L. Finley, Clerk, By M. V. Haws, Deputy.

29 In the Circuit Court of the U. S. for the Western District of Oklahoma.

No. 730.

WELLS, FARGO & COMPANY, a Corporation, Complainant,  
vs.  
M. E. TRAPP, as Auditor of the State of Oklahoma, and LEO MEYER,  
His Successor, as Auditor of the State of Oklahoma, Defendant.

*Waiver of Citation on Appeal.*

The Complainant, Wells Fargo & Company, a corporation, hereby waives the issuance of citation on appeal from the final judgment and decree made herein on the 20th day of March, 1911, to the Supreme Court of the United States, and enters an appearance in said appeal to the Supreme Court of the United States.

Dated this 29 day of April, 1911.

COTTINGHAM & BLEDSOE,  
*Solicitor for Complainant.*

Endorsed: No. 730. In the Circuit Court of the United States for the Western District of Oklahoma. Wells Fargo & Company, A Corporation, Complainant, vs. M. E. Trapp, as Auditor of the State of Oklahoma, and Leo Meyer His Successor as Auditor of the State of Oklahoma, Defendant. Waiver of Citation on Appeal. Filed May 2, 1911. Harry L. Finley, Clerk By M. V. Haws, Deputy.

30 In the Circuit Court of the United States for the Western District of Oklahoma.

No. 730.

WELLS, FARGO & COMPANY, a Corporation, Complainant,  
vs.

M. E. TRAPP, as Auditor of the State of Oklahoma, and LEO MEYER,  
His Successor, as Auditor of the State of Oklahoma, Defendant.

*Stipulation.*

It is hereby stipulated by and between the complainant and the defendant, that there may be omitted from the record on appeal the following:

Præcipe for subpœna,  
Restraining Order.

Bond on temporary injunction,  
and all other papers, etc., in said cause except the following, which shall constitute the transcript of the record on appeal:

Bill of Complaint,

Demurrer,

Stipulation and Order, Oct. 31, 1910,

Stipulation for substitution of party defendant, March 20, 1911;

Order substituting party defendant, March 20, 1911,

Order granting temporary injunction,

Final judgment,

and such other pleadings, orders, etc., as may be filed in said cause after the 20th day of March, 1911.

COTTINGHAM & BLEDSOE,

*Solicitors for Complainant.*

CHARLES WEST,

*Attorney General, Solicitor for Defendant.*

Endorsed: No. 730. Wells Fargo & Co. vs. M. E. Trapp, Auditor and Leo Meyer, his successor. Stipulation as to record on appeal. Filed May 2, 1911. Harry L. Finley, Clerk By M. V. Haws, Deputy.

31 In the Circuit Court of the United States for the Western District of Oklahoma.

No. 730.

WELLS, FARGO & COMPANY, Complainant,  
vs.

M. E. TRAPP, as Auditor of the State of Oklahoma, and LEO MEYER,  
His Successor, as Auditor of the State of Oklahoma, Defendant.

*Præcipe for Transcript of the Record.*

The Clerk of said Court will prepare a transcript of the record in this case on appeal from this court to the Supreme Court of the

United States, in accordance with the Stipulation of the parties to said cause as to the record on appeal in said cause.

Dated the 29 day of April, A. D. 1911.

LEO MEYER,  
*Auditor of State of the State of Oklahoma.*  
CHARLES WEST,  
*Attorney General, Solicitor for Defendant.*

32      Endorsed: No. 730. In the Circuit Court of the United States for the Western District of Oklahoma. Wells Fargo & Company, Complainant, vs. M. E. Trapp as Auditor of the State of Oklahoma, and Leo Meyer, his successor, as Auditor of the State of Oklahoma. Defendant. Præcipe for Transcript of the Record. Filed May 2, 1911. Harry L. Finley, Clerk By M. V. Haws, Deputy. Chas. West, Attorney General.

33      UNITED STATES OF AMERICA,  
*Western District of Oklahoma, ss:*

I, Harry L. Finley, Clerk of the Circuit Court of the United States of America, for the Western District of Oklahoma, do hereby certify the foregoing to be a full, true and complete transcript of the pleadings, record and proceedings in said court in the case of Wells Fargo & Company, a corporation, Complainant vs. M. E. Trapp, as Auditor of the State of Oklahoma, and Leo Meyer, his successor as Auditor of the State of Oklahoma (substituted party defendant), Defendant, No. 730, in Equity, as full, true and complete as the said transcript purports to contain, and as designated in the stipulation and præcipe for transcript of the record above set forth.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at my office in Guthrie, in said Western District of Oklahoma, this 20th day of May A. D., 1911.

[The Seal of the Circuit Court of the United States, Western District of Oklahoma.]

HARRY L. FINLEY,  
*Clerk of the Circuit Court of the United States  
for the Western District of Oklahoma.*

Endorsed on cover: File No. 22,700. W. Oklahoma C. C. U. S. Term No. 624. Leo Meyer, as Auditor of the State of Oklahoma, appellant, vs. Wells, Fargo & Company. Filed May 25th, 1911. File No. 22,700.

# In the Supreme Court of the United States

October, 1911, Term.

---

LEO MEYER, as Auditor of the State of Oklahoma,  
*Appellant,*

VS.

WELLS, FARGO & COMPANY, *Appellee.*

---

No. 624.

---

## MOTION TO ADVANCE BY APPELLEE.

The appellee respectfully submits that the motion to advance, heretofore presented to this Court in this cause by the appellant, omitted the presentation to this Court of matters of grave importance in determining the question of whether or not the cause should be advanced.

The appellee respectfully represents that there is pending in the Circuit Court of the United States for the Western District of Oklahoma seven other causes

involving the same question involved in this cause;  
that those causes are entitled, respectively:

- |                                                                             |          |
|-----------------------------------------------------------------------------|----------|
| Missouri, Kansas & Texas Railway Co.                                        |          |
| vs.                                                                         | No. 513. |
| M. E. Trapp, as Auditor of the State of Oklahoma.                           |          |
| The Atchison, Topeka & Santa Fe Ry. Co.                                     |          |
| vs.                                                                         | No. 514. |
| M. E. Trapp, as Auditor of the State of Oklahoma.                           |          |
| Gulf, Colorado & Santa Fe Railway Co.                                       |          |
| vs.                                                                         | No. 515. |
| M. E. Trapp, as Auditor of the State of Oklahoma.                           |          |
| Chicago, Rock Island & Pacific Ry. Co.                                      |          |
| vs.                                                                         | No. 516. |
| M. E. Trapp, as Auditor of the State of Oklahoma.                           |          |
| St. Louis & San Francisco R. R. Co.                                         |          |
| vs.                                                                         | No. 518. |
| M. E. Trapp, as Auditor of the State of Oklahoma.                           |          |
| J. C. Fargo, President American Express Company,                            |          |
| vs.                                                                         | No. 731. |
| M. E. Trapp, as Auditor of the State of Oklahoma.                           |          |
| Chauncey H. Crosby, Vice-President of the United<br>States Express Company, |          |
| vs.                                                                         | No. 732. |
| M. E. Trapp, as Auditor of the State of Oklahoma.                           |          |

That there has been an order entered in each of  
the said causes, substantially as follows, to-wit:

"On this 20th day of March, 1911, came on  
to be heard, in open court, the demurrer of de-  
fendant M. E. Trapp, as Auditor of the State of  
Oklahoma, as adopted by Leo Meyer, his suc-  
cessor in office, as Auditor of the State of Okla-  
homa, to said bill of complaint herein; and, by  
agreement of counsel in open court, said de-  
murrer to said bill is submitted to the court for  
its consideration and disposition; and, after being

fully advised in the premises, it is ordered that the said demurrer be, and the same is overruled, and to the action of the court overruling the same, defendant Leo Meyer, as Auditor of the State of Oklahoma, excepts.

Thereupon, the defendant having announced that he elected to stand upon his demurrer to said bill, and did not desire to plead further, and counsel having consented thereto in open court, the entering of judgment in this cause is withheld awaiting disposition of appeal by defendant in the case of *Wells, Fargo & Company v. M. E. Trapp, as Auditor of the State of Oklahoma, and Leo Meyer, his successor, as Auditor of the State of Oklahoma*, in Cause No. 730 on the dockets of this Court now being prosecuted to the Supreme Court of the United States. The temporary injunction heretofore granted to remain in force until the further orders of this Court."

That it appears from said journal entry that said causes will necessarily be determined by a decision as to the validity of the statute involved in this cause.

That there is involved in the seven causes above referred to a claim by the State, asserted against the several complainants therein, aggregating about the sum of three hundred thousand dollars per annum.

That, realizing the importance of this litigation to both the complainants in the court below, and the State of Oklahoma, and desiring to avoid embarrassing this Court with a large number of causes, it was agreed between counsel that an appeal would be prosecuted in this cause to this Court, and that the other causes might remain in *statu quo* in the trial court, as per the copy of order above set out, pending the decision of this cause here, and that the Attorney General would make a motion to advance, setting forth the importance of the litigation involved.

The appellee respectfully submits that the Attorney General did not set out, in the application to advance made on behalf of the appellant, the matters and things above set out. That the motion to advance originally submitted here did not disclose the pendency of the other suits, the amount involved therein, and the fact that they remained to abide the decision in this cause.

The appellee respectfully represents that because of the heavy penalties involved, and because of the fact that this cause is a revenue cause, and that there is dependent thereon so many other causes involving such a large sum of revenues, and such burdens and penalties if the cause should be decided adversely to complainant, it believes that the importance of the matters involved is sufficient to justify a presentation to this Court of the facts and the making of a new motion to advance this cause.

The appellee respectfully further shows that the burden imposed by this tax, if held valid, is such that the carriers should, in justice to themselves, if the same is valid, take account thereof in the rates made for transportation charges in the State of Oklahoma, and that they cannot do so pending this appeal, and that, under the circumstances, the taxes and penalties, if the cause should be decided adverse to them, would constitute a very unjust and heavy burden.

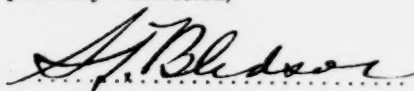
Appellee further respectfully suggests that the case of the *State of Minnesota v. United States Express Company*, No. 708 on the docket of this Court for this term, involves some of the same questions involved in this case.

Appellee further shows that the controversies

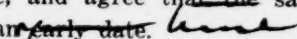
here presented are substantially identical to those presented in *The Galveston H. & S. A. R. Co. v. Texas*, 210 U. S. 217.

For all these reasons, the appellee respectfully moves this Court to advance this cause and order the same submitted for disposition at an early date.

Respectfully submitted,



*Attorney for Appellee.*

I, Charles West, attorney general of the State of Oklahoma, hereby accept notice of the above motion to advance, and agree ~~that the~~ same may be presented at an ~~early~~ date. 

.....  
*Attorney General.*

NO. 624

---

IN THE  
**Supreme Court of the United States**

---

**October Term, 1911**

---

LEO MEYER, AS AUDITOR OF THE STATE OF  
OKLAHOMA, *Appellant*,  
VS.  
WELLS FARGO EXPRESS COMPANY.

---

**MOTION TO ADVANCE BY  
APPELLANT**

Comes now the Appellant and moves the court to advance this cause for decision to as early a date as practicable, and for grounds of said motion says

1. That this action involves the validity of a very large amount of public revenue of the State of Oklahoma.
2. That the decision of this court will determine the

validity *vel non* of all the excise taxes levied upon the value of franchises of being and operating a corporation in said State levied upon public service companies in said State, other than railways, which are doing an intrastate business in said State as well as an interstate business.

3. That said revenues are absolutely necessary for the proper administration of said State, and that the question of the validity of said tax is of the greatest public interest, and affects the public welfare in a matter of paramount importance, and until a decision of the case by this court the said State of Oklahoma will be prevented from collecting such excise taxes from public service corporations in said State.

4. That no other excise tax is levied upon such corporations by the laws of said State other than the laws whose validity are involved in this case.

The State of Oklahoma has a scheme of taxation whereby railroads should pay an excise tax measured upon gross receipts of their business, mining companies an excise tax measured by the production, public service corporations, other than railroads, should pay the tax involved in this case, and corporations other than those named pay a corporation franchise tax. That all persons whose incomes are above certain figures pay an income tax, and all inheritances and gifts in contemplation of

death are taxed by the laws of said State. That all of said taxes are in addition to the ordinary advalorem general property tax. Therefore, upon the issue of this case depends the question of whether public service corporations doing an intrastate as well as an interstate business in said State should bear an analagous burden to that resting upon individuals and other corporations, or whether the complete scheme of taxation adopted by said State is totally deficient as to public service corporations doing an interstate business.



.....,  
*Attorney General of the State of Oklahoma, for Leo Meyer, as Auditor of the State of Oklahoma.*

Service of the above and foregoing motion is hereby accepted this 23rd day of September, 1911, and consent is given that the same may be presented to the court at any time.

.....,  
*Attorneys for The Wells Fargo Company.*